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March 25, 2009

**VIA HAND DELIVERY &  
ELECTRONIC MAIL**

The Honorable Shira A. Scheindlin  
United States District Court  
Southern District of New York  
500 Pearl Street — Room 1620  
New York, New York 10007

Dear Judge Scheindlin:

Plaintiffs respectfully submit this letter in advance of the April 2, 2009, status conference.

**Joint Agenda Items**

**1. Further Briefing Schedule Re: Defendants' Motion for Summary Judgment re: Statute of Limitations in OCWD**

Counsel for plaintiffs and defendants have agreed to a proposed schedule for further briefing on defendants' statute of limitations motion in OCWD, and will be prepared to discuss that proposal with the court at the status conference.

**2. New Jersey and Puerto Rico Case Management Orders**

The parties continue to meet and confer regarding a proposed case management order in *New Jersey Department of Environmental Protection v. Amerada Hess Corp., et al.*. In the pre-conference reply letters to the court, the parties will submit a proposed CMO, which shall include the parties' competing proposals on any areas that remain in dispute. By way of example, the parties do not think it is likely that agreement will be reached on the scope and timing of the interrogatories and document requests served by defendants or the scope and timing of the response thereto.

The parties continue to meet and confer regarding a proposed case management order in *Commonwealth of Puerto Rico, et al v. Shell Oil, et al.*. In the pre-conference reply letters to the court, the parties will submit a proposed CMO, which shall include the parties' competing proposals on any areas that remain in dispute.

**Plaintiffs' Agenda Item**

**Defendants' "Motion to Bar Punitive Damages Based on the Market Share and Commingled Product Theories" in the *City of New York* matter**


On March 24, Defendants in the City of New York case filed a "Motion to Bar Punitive Damages Based on the Market Share and Commingled Product Theories" ("Motion"). *See* Dkt. #90. The Motion, which claims to be both a summary judgment motion and a motion *in limine*, is procedurally defective for at least two reasons. *First*, the Motion purports to seek summary judgment on the City's "claim for punitive damages." *See* Motion at 2. This Court has repeatedly held that punitive damages "are not a claim" and that summary judgment is "an ill-suited procedural vehicle" to adjudicate requests for punitive damages. *In re MTBE Products Liability Litigation*, 517 F.Supp.2d 662, 666 (S.D.N.Y. 2007); *see also In re MTBE Products Liability Litigation*, 568 F.Supp.2d 376, 380 (S.D.N.Y. 2008) ("there is no such thing as a punitive damage claim"). *Second*, the deadline for filing motions for summary judgment "not requiring expert evidence" was January 19, 2009 (over two months ago). *See* CMO No. 47. There is no expert evidence cited in the Motion or the accompanying motion papers. *Id.* To the extent it purports to seek summary judgment, the Motion is therefore untimely.

For both these reasons, the City respectfully requests that the Court order Defendants to withdraw the Motion and re-file it as a *Motion in Limine*. In any event, the City respectfully requests that the Court order that the deadline for responding to the Motion is May 25, 2009 (the deadline for responses to motions *in limine*). *See* CMO 47.

Respectfully submitted,

WEITZ & LUXENBERG, P.C.

By:

  
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cc: All Counsel of Record